

KILPATRICK TOWNSEND & STOCKTON LLP

April E. Isaacson (SBN 180638)  
 aisaacson@kilpatricktownsend.com  
 Two Embarcadero Center, Suite 1900  
 San Francisco CA 94111  
 (415) 273 8306

Rishi Gupta (SBN 313079)  
 rgupta@kilpatricktownsend.com  
 Sarah Y. Kamran (SBN 347617)  
 skamran@kilpatricktownsend.com  
 1801 Century Park East, Suite 2300  
 Los Angeles CA 90067  
 (310) 777 3733

Mitchell G. Stockwell (*admitted pro hac vice*)  
 mstockwell@kilpatricktownsend.com  
 Vaibhav P. Kadaba (*admitted pro hac vice*)  
 wkadaba@kilpatricktownsend.com  
 Michael J. Turton (*admitted pro hac vice*)  
 mturton@kilpatricktownsend.com  
 Courtney S. Dabbieri (*admitted pro hac vice*)  
 cdabbieri@kilpatricktownsend.com  
 Christopher S. Leah (*admitted pro hac vice*)  
 cleah@kilpatricktownsend.com  
 1100 Peachtree Street, NE, Suite 2800  
 Atlanta GA 30309  
 (404) 815 6500

*Attorneys for Defendants Cox Communications, Inc.;  
 CoxCom, LLC; and Cox Communications California, LLC*

**UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ENTROPIC COMMUNICATIONS,  
 LLC,

Plaintiff,

v.

COX COMMUNICATIONS, INC.,  
 COXCOM, LLC, AND COX  
 COMMUNICATIONS CALIFORNIA,  
 LLC,  
 Defendants.

Civil Action No. 2:23-cv-01049-JWH-KES

**MEMORANDUM OF POINTS AND  
 AUTHORITIES FOR COX'S MOTION  
 FOR LEAVE TO AMEND ANSWER  
 AND JOINDER**

Hearing Date: September 22, 2023  
 Hearing Time: 8:45 a.m.  
 Courtroom: 9D  
 Judge: Hon. John W. Holcomb

**DEMAND FOR JURY TRIAL**

**REDACTED VERSION OF DOCUMENT PROPOSED TO BE FILED UNDER SEAL**

MEMORANDUM OF POINTS AND AUTHORITIES FOR COX'S MOTION FOR LEAVE TO  
 AMEND ANSWER AND RULE 19 JOINDER  
 CASE NO. 2:23-CV-01049-JWH-KES

**TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>II.</b>	<b>STATEMENT OF MATERIAL FACTS .....</b>	<b>2</b>
<b>A.</b>	<b>Relevant Procedural History .....</b>	<b>2</b>
<b>B.</b>	<b>The Proposed Amendment to Add MaxLinear and the Counterclaims.....</b>	<b>3</b>
<b>III.</b>	<b>LEGAL STANDARD.....</b>	<b>7</b>
<b>IV.</b>	<b>ARGUMENT .....</b>	<b>8</b>
<b>A.</b>	<b>Cox’s Good Faith Amendment Is Timely.....</b>	<b>8</b>
<b>B.</b>	<b>Granting Cox’s Motion Does not Substantially Prejudice Entropic or MaxLinear .....</b>	<b>9</b>
<b>C.</b>	<b>Cox’s Amendment to Add Counterclaims and Add MaxLinear Is Not Futile.....</b>	<b>12</b>
<b>D.</b>	<b>Joinder of MaxLinear Is Appropriate under the Applicable Legal Standards .....</b>	<b>13</b>
<b>V.</b>	<b>CONCLUSION.....</b>	<b>16</b>

## TABLE OF AUTHORITIES

**Page(s)**

### **Cases**

<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) .....	12
<i>Athena Feminine Techs. Inc. v. Wilkes</i> , No. C 10-4868 SBA, 2013 WL 450147, at *2 (N.D. Cal. Feb. 6, 2013) .....	12
<i>Bakia v. Los Angeles Cnty. of State of Cal.</i> , 687 F.2d 299 (9th Cir. 1982) .....	13
<i>Bowles v. Reade</i> , 198 F.3d 752 (9th Cir. 1999) .....	9
<i>Cat Coven LLC v. Shein Fashion Grp., Inc.</i> , No. CV197967PSGGJSX, 2020 WL 3840440 (C.D. Cal. Mar. 12, 2020) .....	14
<i>Christie Digital Sys. USA, Inc. v. U.S. Philips Corp.</i> , No. CV091097GAFAJWX, 2010 WL 11596653 (C.D. Cal. Feb. 2, 2010) .....	13
<i>In re Cir. Breaker Litig.</i> , 175 F.R.D. 547 (C.D. Cal. 1997) .....	10
<i>DCD Programs, Ltd. v. Leighton</i> , 833 F.2d 183 (9th Cir. 1987) .....	7, 12
<i>Desert Empire Bank v. Ins. Co. of N. Am.</i> , 623 F.2d 1371 (9th Cir. 1980) .....	15
<i>Dexcom, Inc. v. AgaMatrix, Inc.</i> , No. CV 16-5947-SJO (ASX), 2018 WL 10323723 (C.D. Cal. May 30, 2018) .....	8
<i>Dexcom, Inc. v. AgaMatrix, Inc.</i> , No. CV1605947SJOASX, 2017 WL 3433543 (C.D. Cal. Feb. 3, 2017) .....	8

MEMORANDUM OF POINTS AND AUTHORITIES FOR COX'S MOTION FOR LEAVE  
TO AMEND ANSWER AND RULE 19 JOINDER  
CASE NO. 2:23-cv-01049-JWH-KES

1	<i>Eminence Capital, LLC v. Aspen, Inc.</i> ,	
2	315 F.3d 1048 (9th Cir. 2003).....	7
3	<i>Eminence Capital, LLC v. Aspeon, Inc.</i> ,	
4	316 F.3d 1048 (9th Cir. 2003).....	9, 10
5	<i>Esquivel v. Prudential Life Ins. Co.</i> ,	
6	No. 217CV8610ODWJCX, 2018 WL 3569350 (C.D. Cal. July 23,	
7	2018).....	7
8	<i>Est. of Mann v. Cnty. of Stanislaus</i> ,	
9	No. 121CV01098AWISKO, 2022 WL 2533717 (E.D. Cal. July 7,	
10	2022).....	8
11	<i>Foman v. Davis</i> ,	
12	371 U.S. 178 (1962) .....	7, 9
13	<i>Griggs v. Pace Am. Grp., Inc.</i> ,	
14	170 F.3d 877 (9th Cir. 1999).....	7, 8
15	<i>Hofstetter v. Chase Home Finance, LLC</i> ,	
16	751 F. Supp. 2d 1116 (N.D. Cal. 2010).....	12
17	<i>ImprimisRx, LLC v. OSRX, Inc.</i> ,	
18	No. 21-CV-01305-BAS-DDL, 2022 WL 15524584 (S.D. Cal. Oct.	
19	27, 2022).....	10
20	<i>Jackson v. Bank of Hawaii</i> ,	
21	902 F.2d 1385 (9th Cir. 1990).....	8
22	<i>Jones v. City of Los Angeles</i> ,	
23	No. 2:20-CV-11147-SVW-SK, 2021 WL 6809408 (C.D. Cal. Dec.	
24	16, 2021).....	9
25	<i>Katz v. Lear Siegler, Inc.</i> ,	
26	909 F.2d 1459 (Fed. Cir. 1990).....	13
27	<i>Missouri ex rel. Koster v. Harris</i> ,	
28	847 F.3d 646 (9th Cir. 2017).....	12
	<i>League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency</i> ,	
	558 F.2d 914 (9th Cir. 1977).....	14

1	<i>LMNO Cable Grp., Inc. v. Discovery Commc'ns, LLC,</i>	
2	No. LACV1604543JAKSKX, 2017 WL 8943167 (C.D. Cal. June	
3	19, 2017).....	13, 15
4	<i>Netbula, LLC v. Distinct Corp.,</i>	
5	212 F.R.D. 534 (N.D. Cal. 2003) .....	12
6	<i>Owens v. Kaiser Found. Health Plan, Inc.,</i>	
7	244 F.3d 708 (9th Cir. 2001).....	7
8	<i>Philips N. Am. LLC v. Garmin Int'l, Inc.,</i>	
9	No. CV 19-06301-AB (KSX), 2020 WL 6064006 (C.D. Cal. Aug.	
10	26, 2020).....	10
11	<i>PureCircle USA Inc. v. SweeGen, Inc.,</i>	
12	No. SACV181679JVSJDEX, 2020 WL 1060364 (C.D. Cal. Feb.	
13	18, 2020).....	12
14	<i>Rastgouie v. Michael Kors Stores California, Inc.,</i>	
15	No. LACV1900012JAKJEMX, 2021 WL 4786886 (C.D. Cal. Mar.	
16	2, 2021).....	11
17	<i>San Luis &amp; Delta-Mendota Water Authority v. U.S. Dept. of Interior,</i>	
18	236 F.R.D. 491 (E.D. Cal. 2006).....	9
19	<i>Schnabel v. Lui,</i>	
20	302 F.3d 1023 (9th Cir. 2002).....	13
21	<i>Taye, Inc. v. Drum Workshop, Inc.,</i>	
22	No. CV074835PSGVBKX, 2008 WL 11338266 (C.D. Cal. Sept.	
23	12, 2008).....	12
24	<i>United States v. Bowen,</i>	
25	172 F.3d 682 (9th Cir. 1999).....	13, 14
26	<i>United States v. Dang,</i>	
27	488 F.3d 1135 (9th Cir. 2007).....	11
28	<i>Viskase Corp. v. Am. Nat. Can Co.,</i>	
	261 F.3d 1316 (Fed. Cir. 2001).....	14
	<i>Wizards of the Coast LLC v. Cryptozoic Entm't LLC,</i>	
	309 F.R.D. 645 (W.D. Wash. 2015).....	8

MEMORANDUM OF POINTS AND AUTHORITIES FOR COX'S MOTION FOR LEAVE  
TO AMEND ANSWER AND RULE 19 JOINDER  
CASE NO. 2:23-cv-01049-JWH-KES

1	<i>Xyratex Tech., Ltd. v. Teradyne, Inc.</i> ,	
2	No. CV0804545SJOPLAX, 2009 WL 10702551 (C.D. Cal. Apr.	
3	10, 2009) .....	9
4	<b>Statutes</b>	
5	28 U.S.C. § 1367.....	14, 16
6	<b>Other Authorities</b>	
7	Fed. R. Civ. P. 13.....	13
8	Federal Rule of Civil Procedure 15(a).....	2, 7, 9, 12
9	Federal Rule of Civil Procedure 19 .....	13, 14, 16
10	Federal Rule of Civil Procedure 19(a).....	13
11	Federal Rule of Civil Procedure 19(b) .....	13
12	Federal Rule of Civil Procedure 20 .....	14
13	Rules 19 and 20 .....	13
14	United States Constitution Article III.....	14, 16

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendants Cox Communications, Inc., CoxCom, LLC, and Cox Communications California, LLC (collectively “Cox”) respectfully seek leave to file a First Amended Answer and Counterclaims and add MaxLinear, Inc. and MaxLinear Communications, LLC (collectively, “Maxlinear”) as additional parties and counterclaim defendants in the claims asserted by Cox in its First Amended Answer and Counterclaims.

Plaintiff’s Complaint asserts it acquired the Asserted Patents and repeatedly references, relies upon, and applies those patents against DOCSIS. Plaintiff’s own averments, if true, would establish that one or more of the Asserted Patents are essential to compliance with the DOCSIS specifications. Indeed, Plaintiff’s averments directly implicate the DOCSIS specifications.

These counterclaims arise out of the fact that the original owners of the asserted patents were involved in the development of DOCSIS. As a result, MaxLinear has executed a DOCSIS License Agreement, under which it is subject to certain obligations. The assignments of the Asserted Patents do not include any provisions assuming the obligations MaxLinear incurred under the DOCSIS License Agreements, including an acknowledgement that [REDACTED]

[REDACTED] Cox’s counterclaims explain how MaxLinear’s transfer of the patents to Plaintiff and this resulting lawsuit breached these obligations. Moreover, Plaintiff, which was aware of the relevant contractual obligations, tortiously interfered with MaxLinear’s contractual obligations to Cox and other MoCA members. Plaintiff and MaxLinear’s actions have damaged Cox.

The breach of contract, tortious interference with contractual obligations and unjust enrichment claim are well founded and well-pled. This motion is brought in

1 good faith, is timely and the new claims would not substantially prejudice Plaintiff.  
 2 Joining MaxLinear is appropriate, and likely necessary, in view of the substantial  
 3 overlap of the facts and issues with the claims already in play. Accordingly, Cox's  
 4 motion for leave to file a First Amended Answer and Counterclaims and join  
 5 MaxLinear should be granted.

6 Pursuant to the Court's Standing Order 11, Cox states that the effect of the  
 7 proposed amendment is to: (1) add MaxLinear, Inc. as an additional counterclaim  
 8 defendant to the counterclaims stated in Cox's First Amended Answer and  
 9 Counterclaims; (2) add MaxLinear Communications, LLC as an additional  
 10 counterclaim defendant to the counterclaims stated in Cox's First Amended Answer  
 11 and Counterclaims; and (3) assert counterclaims for breach of contract by  
 12 MaxLinear, tortious interference of contract against Entropic, and unjust  
 13 enrichment against MaxLinear. The aforementioned amendments are on page 21,  
 14 line 14 through page 33 line 6 of Cox's Amended Answer.

## 15 **II. STATEMENT OF MATERIAL FACTS**

### 16 **A. Relevant Procedural History**

17 Plaintiff Entropic Communications, LLC ("Entropic" or "Plaintiff") filed this  
 18 lawsuit against Cox on February 10, 2023, for infringement of U.S. Patent Nos.  
 19 8,223,775, 8,284,690, 8,792,008, 9,210,362, 9,825,826, 10,135,682, 11,381,866,  
 20 and 11,399,206 (collectively, the "Asserted Patents"). Cox filed its Answer to the  
 21 Complaint on May 8, 2023.

22 The deadline to amend pleadings as of right per FRCP Rule 15(a)(1)(B) was  
 23 May 30, 2023. To date, neither party has amended its pleadings. This motion is  
 24 made following the conference of counsel pursuant to L.R. 7-3 which took place on  
 25 August 14, 2023.

26 On August 8, 2023, Cox provided Entropic a draft redline of its Answer  
 27 reflecting the Amended Answer and Counterclaims it intended to request leave to  
 28



1 file, and requested a date and time to meet and confer regarding Entropic's position  
 2 as to Cox's request. On August 14, 2023, both parties participated in the meet and  
 3 confer. A follow up conference took place on August 21, 2023, where Entropic  
 4 stated that it was still evaluating their position.

5 **B. The Proposed Amendment to Add MaxLinear and the**  
 6 **Counterclaims**

7 There are three entities involved in Cox's counterclaims. Plaintiff, Entropic,  
 8 is the entity that recently acquired the Asserted Patents and brought this litigation.  
 9 MaxLinear, Inc., is the entity which purchased the original Entropic  
 10 Communications, Inc. in 2015. Amended Answer at ¶ 273. Through a series of  
 11 mergers or name changes Entropic Communications, Inc. (which the counterclaims  
 12 call "Entropic Inc.") eventually became MaxLinear Communications LLC. *Id.*  
 13 MaxLinear Communications LLC is an affiliate of MaxLinear, Inc. *Id.* at ¶ 274.

14 CableLabs develops various new technologies and standards for  
 15 interoperability, including the Data Over Cable Service Interface Specifications  
 16 ("DOCSIS"). *Id.* at ¶ 281-82. Various cable operators and vendors of equipment to  
 17 the cable industry, including Cox, participate in developing DOCSIS after  
 18 executing applicable agreements. *Id.* at ¶ 283. MaxLinear participated in the  
 19 development of CableLab's DOCSIS specifications, executing applicable NDAs  
 20 and a Contribution Agreement as part of that process. *Id.* at ¶ 284. As a result,  
 21 MaxLinear received, among other benefits, the ability to see confidential  
 22 information concerning the draft specifications, participate in the process of  
 23 developing draft specifications, learn and understand the direction of technology for  
 24 the cable industry, position its own products and services to market to the cable  
 25 industry, and make, market, and sell its DOCSIS compliant products to the cable  
 26 industry. *Id.*

1       ***The DOCSIS License Agreement:*** MaxLinear is one of multiple vendors to  
2 have executed a DOCSIS License Agreement, which states that the agreements  
3 were made so CableLabs could “ [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED].” *Id.* at ¶ 286 & Ex. A. MaxLinear, in  
7 return, desired “ [REDACTED]

8 [REDACTED]  
9 [REDACTED] *Id.*

10       Through its DOCSIS License Agreement, MaxLinear [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21       As a result, [REDACTED]  
22 [REDACTED]  
23 [REDACTED]. *Id.* at ¶ 290. [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]. *Id.*

1       ***The Breach of the License Agreement:*** As explained above, given the  
2 various averments in Plaintiff's Complaint, it is reasonable to conclude that, if  
3 Plaintiff's averments were true, one or more of the Asserted Patents contain patent  
4 claims essential to compliance with the DOCSIS specifications. *See Id.* at ¶ 299-  
5 300. As a result, no claims of patent infringement should ever have been asserted  
6 against Cox, which is an intended beneficiary of the DOCSIS license agreements  
7 and should receive the benefit of the applicable perpetual, royalty free and  
8 irrevocable licenses granted via the CableLabs patent pool.

9       Instead, MaxLinear embarked on a course of conduct that resulted in breach  
10 of its obligations and damage to Cox. Rather than ensuring that MaxLinear's  
11 [REDACTED]  
12 [REDACTED], MaxLinear, of course, accepted an interest in the outcome of this suit,  
13 as reflected in Plaintiff's disclosures. MaxLinear further breached its contractual  
14 obligations by failing to ensure the DOCSIS license clauses would be enforced.  
15 For example, on March 31, 2021, MaxLinear Communications LLC executed and  
16 filed with the U.S. Patent Office a First and Second assignment agreement, which  
17 purport to assign the Asserted Patents to Entropic and are the last assignments  
18 applicable to the Asserted Patents to have been filed in the U.S. Patent Office  
19 before the filing of Plaintiff's Complaint. *Id.* at ¶ 295.<sup>1</sup> The assignments by which  
20 Plaintiff purportedly acquired title to the Asserted Patents violate the DOCSIS  
21 License Agreement. *Id.* at ¶ 302-303. Rather than enforcing MaxLinear's  
22 contractual obligation to [REDACTED]  
23 [REDACTED]  
24 [REDACTED], the assignments  
25 purport to strip all such encumbrances from the patents. Through this and related  
26 conduct, MaxLinear breached its contractual obligations and has damaged Cox. *Id.*

27       <sup>1</sup> The purported First and Second Assignments are Exhibits C and D to the Amended Answer.

1 at ¶ 294-303. Plaintiff was fully aware of the relevant DOCSIS obligations and  
2 nonetheless induced MaxLinear's breaches and interfered with the contract. *Id.* at  
3 ¶ 304-310.

4 ***The Breach of Contract and Tortious Interference Claims:*** Cox accordingly  
5 asserts claims against MaxLinear in Counterclaim Count I, and against Plaintiff in  
6 Counterclaim Count II. Specifically, Count I asserts that MaxLinear has breached  
7 its contractual obligations by engaging in at least the following actions: (a)  
8 accepting an interest in an outcome of this suit accusing Cox of infringing the  
9 Asserted Patents despite knowing of the prior grant of licenses to patents essential  
10 or included in DOCSIS; (b) breaching the DOCSIS License Agreements by  
11 attempting to assign the Asserted Patents free of any encumbrances; and (c)  
12 transferring patents to Entropic without ensuring that Entropic would honor  
13 MaxLinear's royalty-free licensing obligations as a purported successor-in-interest,  
14 and making such transfers despite knowledge that Entropic aimed to bring suits  
15 and/or pursue additional and unlawful payments in violation of MaxLinear's  
16 obligations. *Id.* at ¶ 305-10. Because of this breach of contract, MaxLinear's  
17 purported assignment of the Asserted Patents to Entropic was faulty, and  
18 MaxLinear retains an interest in the Asserted Patents.

19 Count II asserts a tortious interference with contract claim against Entropic,  
20 who was aware of this contract and MaxLinear's obligation. Nevertheless, Entropic  
21 induced a breach of MaxLinear's contractual obligations by inducing MaxLinear to  
22 attempt to assign various patents for Entropic to enforce and for Entropic to seek  
23 damages, despite Entropic's awareness that such patents may reasonably contain  
24 essential patent claims. As a result of Entropic's actions, MaxLinear breached its  
25 contractual obligations.

26 ***Alternative Unjust Enrichment Claim:*** Finally, Cox asserts in Count III an  
27 alternative claim for unjust enrichment. By executing the DOCSIS License

1 Agreements, representing itself as a supplier of DOCSIS equipment and therefore a  
2 “licensor” to the DOCSIS License Agreements, and/or by promoting DOCSIS  
3 compliance of its equipment, MaxLinear obtained the benefit of joining the  
4 DOCSIS patent pool, including the ability to develop, market, and sell products that  
5 were compatible with DOCSIS specifications. *Id.* at ¶ 293. It would be unjust to  
6 allow MaxLinear to retain such benefits, at Cox’s expense. *Id.* at ¶ 316-18.

### 7 **III. LEGAL STANDARD**

8 Federal Rule of Civil Procedure 15(a) states that leave to amend a pleading  
9 “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). The United  
10 States Supreme Court has repeatedly instructed lower courts that leave to amend  
11 should be granted with “extreme liberality.” *DCD Programs, Ltd. v. Leighton*, 833  
12 F.2d 183, 186 (9th Cir. 1987); *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d  
13 708, 712 (9th Cir. 2001); *see also Foman v. Davis*, 371 U.S. 178 (1962) (leave to  
14 amend should be freely given).

15 District courts consider four factors, referred to as the *Foman* factors, when  
16 evaluating a request for leave to amend: “bad faith, undue delay, prejudice to the  
17 opposing party, and futility of the amendment.” *DCD*, 833 F.2d at 186; *see also*  
18 *Foman*, 371 U.S. at 182. When applying these factors, “determination should be  
19 performed with all inferences in favor of granting the motion.” *Esquivel v.*  
20 *Prudential Life Ins. Co.*, No. 217CV86100DWJCX, 2018 WL 3569350, at \*2  
21 (C.D. Cal. July 23, 2018) (*quoting Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877,  
22 880 (9th Cir. 1999)). Generally, prejudice to the opposing party carries the greatest  
23 weight out of the *Foman* factors. *See DCD*, 833 F.2d at 186. “The party opposing  
24 amendment bears the burden of showing prejudice.” *Id.* at 187. “Absent prejudice,  
25 or a strong showing of any of the remaining *Foman* factors, there exists a  
26 presumption under Rule 15(a) in favor of granting leave to amend.” *See Eminence*  
27 *Capital, LLC v. Aspen, Inc.*, 315 F.3d 1048, 1052 (9th Cir. 2003).

1 **IV. ARGUMENT**

2 **A. Cox's Good Faith Amendment Is Timely.**

3 Cox did not file this motion in bad faith. "In the context of a motion to  
4 amend, 'bad faith' means 'acting with intent to deceive, harass, mislead, delay, or  
5 disrupt.'" *Dexcom, Inc. v. AgaMatrix, Inc.*, No. CV 16-5947-SJO (ASX), 2018 WL  
6 10323723, at \*2 (C.D. Cal. May 30, 2018) (quoting *Wizards of the Coast LLC v.*  
7 *Cryptozoic Entm't LLC*, 309 F.R.D. 645, 651 (W.D. Wash. 2015)). "Bad faith  
8 exists when the moving party seeks to amend merely to prolong the litigation by  
9 adding 'new but baseless legal theories.'" *Est. of Mann v. Cnty. of Stanislaus*, No.  
10 121CV01098AWISKO, 2022 WL 2533717 at \*3 (E.D. Cal. July 7, 2022) (quoting  
11 *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 881 (9th Cir. 1999)).

12 Rather than acting with intent to deceive, harass, mislead, delay, or disrupt,  
13 Cox is acting in good faith. At the time Cox filed its original Answer in this action,  
14 it was doing so based on the information presented to it. It was only after  
15 performing a thorough investigation that Cox determined it was necessary to add  
16 MaxLinear and certain counterclaims. As explained below, the legal theories upon  
17 which these amendments are based are well founded.

18 Further, Cox did not act with undue delay. "In assessing whether there is  
19 undue delay, it is not sufficient merely to ask whether the motion to amend  
20 complies with the court's scheduling order . . . Rather, in evaluating undue delay,  
21 we . . . inquire whether the moving party knew or should have known the facts and  
22 theories raised by the amendment in the original pleading." *Dexcom, Inc. v.*  
23 *AgaMatrix, Inc.*, No. CV1605947SJOASX, 2017 WL 3433543, at \*5–6 (C.D. Cal.  
24 Feb. 3, 2017) (quotation omitted). Ninth Circuit law also provides that "'undue  
25 delay' may also refer to whether 'permitting an amendment would . . . produce an  
26 undue delay in the litigation.'" *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387  
27 (9th Cir. 1990).

28  
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1 These amendments are being presented only shortly after the deadline to  
2 amend Cox's Answer by right. Rather than being part of any dilatory motive, Cox  
3 brought this motion immediately after determining these amendments were  
4 necessary, preparing same and conferring with Entropic. Cox's investigation and  
5 preparation of the amendment is timely and reflects appropriate diligence,  
6 especially considering the fact the large number of patents covered in this litigation.  
7 While there is no delay in presenting this amendment, even if there were delay  
8 alone "is insufficient to justify denying a motion to amend." *Bowles v. Reade*, 198  
9 F.3d 752, 758 (9th Cir. 1999); *see also San Luis & Delta-Mendota Water Authority*  
10 *v. U.S. Dept. of Interior*, 236 F.R.D. 491, 500 (E.D. Cal. 2006) ("delay in and of  
11 itself is not sufficient reason to deny a motion to supplement").

12 Finally, permitting this amendment would not produce a delay in the  
13 litigation. This is the first amendment Cox or Entropic have brought in this  
14 litigation, a schedule has just been set for this case, and discovery has only just  
15 begun.

16 **B. Granting Cox's Motion Does not Substantially Prejudice Entropic**  
17 **or MaxLinear**

18 This Court has interpreted "undue prejudice" to mean "substantial prejudice  
19 or substantial negative effect." *Xyratex Tech., Ltd. v. Teradyne, Inc.*, No.  
20 CV0804545SJOPLEX, 2009 WL 10702551, at \*5 (C.D. Cal. Apr. 10, 2009)  
21 (quotation omitted). Among all the factors, "it is the consideration of prejudice to  
22 the opposing party that carries the greatest weight." *Jones v. City of Los Angeles*,  
23 No. 2:20-CV-11147-SVW-SK, 2021 WL 6809408, at \*2 (C.D. Cal. Dec. 16, 2021)  
24 (quoting *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.  
25 2003)). "Absent prejudice, or a strong showing of any of the remaining *Foman*  
26 factors, there exists a presumption under Rule 15(a) in favor of granting leave to  
27 amend." *Id.* Additionally, "[t]he party opposing amendment bears the burden of  
28



1 showing prejudice, which is the ‘touchstone of the inquiry under [R]ule 15(a).’”  
2 *Philips N. Am. LLC v. Garmin Int’l, Inc.*, No. CV 19-06301-AB (KSX), 2020 WL  
3 6064006, at \*3 (C.D. Cal. Aug. 26, 2020) (quoting *Eminence Capital*, 316 F.3d at  
4 1052).

5 Plaintiff identified no potential prejudice during the meet and confer. That is  
6 appropriate as this litigation is still in the early stages, a schedule has just been set  
7 and discovery has just begun. Thus, Cox’s proposed amendments would not alter  
8 the course of the litigation or require any changes at a late stage of litigation, as this  
9 case is not far progressed. Indeed, Entropic will have ample time to develop their  
10 case in response to any of Cox’s amendments, because the date for the close of fact  
11 discovery is not yet set in this case and any strategic decisions are still in the early  
12 stages of development. No extra discovery or changes to the schedule would be  
13 needed, because parties can simply account for Cox’s amendments in the discovery  
14 that is yet to occur.

15 Cox’s proposed amendments relate to underlying facts and information that  
16 already had significant overlap with the existing issues in this litigation. Cox’s  
17 counterclaims are all related to the Asserted Patents and their purported transfer.  
18 This means the counterclaims involve facts and issues that would be raised even  
19 without Cox’s amendments. For example, Cox’s Sixth Defense already addressed  
20 potential license and exhaustion defenses and its Eleventh Defense addressed lack  
21 of standing, each of which encompasses facts presented via the counterclaims.  
22 Amended Answer, ¶ 256, 261. But, again, even if extra discovery were needed,  
23 such a factor by itself is insufficient because “the need for additional discovery is  
24 insufficient . . . to deny a proposed amended pleading.” *ImprimisRx, LLC v.*  
25 *OSRX, Inc.*, No. 21-CV-01305-BAS-DDL, 2022 WL 15524584, at \*3 (S.D. Cal.  
26 Oct. 27, 2022) (quoting *In re Cir. Breaker Litig.*, 175 F.R.D. 547, 551 (C.D. Cal.  
27 1997)).

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MEMORANDUM OF POINTS AND AUTHORITIES FOR COX’S MOTION FOR LEAVE  
TO AMEND ANSWER AND RULE 19 JOINDER  
CASE NO. 2:23-cv-01049-JWH-KES



1 As to MaxLinear, it was already implicated in this litigation due to its  
2 significant involvement with the Asserted Patents, meaning the need for MaxLinear  
3 to be an active party should be no surprise. Indeed, MaxLinear has a financial  
4 interest in this case, and its purported assignments of the Asserted Patents to  
5 Entropic took place very recently, on March 31, 2021. *See* Dkt. No. 63. The  
6 purported assignment agreements both include a clause that states “Assignor will, at  
7 the reasonable request of Assignee, do all things necessary, proper, or advisable, . . .  
8 to assist Assignee in obtaining, perfecting, sustaining, and/or enforcing the Patent  
9 Rights.” Thus, the agreements contemplate that MaxLinear may be involved in  
10 attempted enforcement of the Asserted Patents.

11 Due to issues with the attempted transfer of the Asserted Patents, MaxLinear  
12 may retain an interest in those Patents to this day. This interest in the Asserted  
13 Patents is yet another reason that MaxLinear would already be involved in this  
14 litigation even without being added as a party. Indeed, both Entropic and Cox have  
15 already identified MaxLinear as a material witness to this case in their Initial  
16 Disclosures, which indicates MaxLinear would necessarily already be providing  
17 discovery. Given Cox’s amendments do not mean any major change to the scope of  
18 this litigation or the facts at issue, they should not result in any prejudice to  
19 Entropic.

20 Finally, Cox’s proposed amendment will not delay the resolution of the  
21 dispute or create case management issues, meaning “an overall evaluation of ‘[t]he  
22 rights of the parties, the ends of justice, and judicial economy’ supports allowing  
23 the amendment.” *Rastgouie v. Michael Kors Stores California, Inc.*, No.  
24 LACV1900012JAKJEMX, 2021 WL 4786886, at \*4 (C.D. Cal. Mar. 2, 2021)  
25 (*quoting United States v. Dang*, 488 F.3d 1135, 1143 (9th Cir. 2007)).  
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**C. Cox's Amendment to Add Counterclaims and Add MaxLinear Is Not Futile**

An amendment is futile only if it would clearly be subject to dismissal. *See PureCircle USA Inc. v. SweeGen, Inc.*, No. SACV181679JVSJDEX, 2020 WL 1060364, at \*2 (C.D. Cal. Feb. 18, 2020) (quoting *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017)) (“An amendment is futile when no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense.”); *Taye, Inc. v. Drum Workshop, Inc.*, No. CV074835PSGVBKX, 2008 WL 11338266, at \*2 (C.D. Cal. Sept. 12, 2008) (quoting *DCD Program*, 833 F.2d at 188). Denial of motions for leave to amend under Rule 15(a) on futility grounds is “rare.” *Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal. 2003).

Whether an amendment is ‘futile’ is measured by the same standards that govern a motion to dismiss.” *Hofstetter v. Chase Home Finance, LLC*, 751 F. Supp. 2d 1116, 1123 (N.D. Cal. 2010). “A proposed claim is not ‘futile’ if, taking all well-pleaded factual allegations as true, it contains enough facts to ‘state a claim to relief that is plausible on its face.’” *Athena Feminine Techs. Inc. v. Wilkes*, No. C 10-4868 SBA, 2013 WL 450147, at \*2 (N.D. Cal. Feb. 6, 2013) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009)).

Entropic did not identify any issue with futility in the parties’ meet and confer. When taking Cox’s well-pleaded allegations from its proposed Counterclaims as true, they are plausible on their face and sufficient to put Entropic on notice of the accused conduct. Thus, for this reason alone, Cox’s proposed amendments are not futile.

**D. Joinder of MaxLinear Is Appropriate under the Applicable Legal Standards**

Joinder of a party to a counterclaim is governed by Rules 19 and 20. *See* Fed. R. Civ. P. 13; *Christie Digital Sys. USA, Inc. v. U.S. Philips Corp.*, No. CV091097GAFAJWX, 2010 WL 11596653 \*4 (C.D. Cal. Feb. 2, 2010) (“Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim”). Joinder is appropriate under either Rule.

***Joinder is Appropriate Under Rule 19:*** In the Ninth Circuit<sup>2</sup>, analyzing “required joinder” under Rule 19 requires a three-step process. *See United States v. Bowen*, 172 F.3d 682, 688 (9th Cir. 1999). First, a district court must determine whether the absent party is “necessary,” as defined in Fed. R. Civ. P. 19(a). The Ninth Circuit has found that a party is “necessary” in two circumstances: “(1) when complete relief is not possible without the absent party’s presence, or (2) when the absent party claims a legally protected interest in the action.” *Id.*; *see also Bakia v. Los Angeles Cnty. of State of Cal.*, 687 F.2d 299, 301 (9th Cir. 1982) (“Rule 19 requires a trial court to engage in a two-step analysis. This first step involves considering whether nonjoinder would prevent the award of complete relief, or the absentee’s interests would otherwise be prejudiced or the persons already parties would be subject to a substantial risk of double or inconsistent obligations.”). If the first requirement is met, the second step of the analysis requires the court to assess whether it is “feasible” to join that party. *See Schnabel v. Lui*, 302 F.3d 1023, 1029 (9th Cir. 2002); Fed. R. Civ. P. 19(b). Third, if “joinder is not ‘feasible,’ the court must decide whether the absent party is ‘indispensable,’ i.e., whether in ‘equity and good conscience,’ the action can continue without the party.” *LMNO Cable Grp.*,

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<sup>2</sup> The Federal Circuit has held that, since “joinder is an issue not unique to patent law,” regional circuit law applies to issues related to joinder. *Katz v. Lear Siegler, Inc.*, 909 F.2d 1459, 1461 (Fed. Cir. 1990).

1 *Inc. v. Discovery Commc'ns, LLC*, No. LACV1604543JAKSKX, 2017 WL  
2 8943167, at \*2 (C.D. Cal. June 19, 2017) (*quoting Bowen*, 172 F.3d at 688). Courts  
3 have held that joinder is feasible when the joinder would not destroy subject matter  
4 jurisdiction. *See Cat Coven LLC v. Shein Fashion Grp., Inc.*, No.  
5 CV197967PSGGJSX, 2020 WL 3840440, at \*6 (C.D. Cal. Mar. 12, 2020).

6 As to the first prong, if Plaintiff were successful in showing one or more of  
7 the Asserted Patents contain a claim essential to compliance with the DOCSIS  
8 standards, then under Cox's claims MaxLinear retains an interest in the Asserted  
9 Patents due to the faulty assignment in derogation of the DOCSIS License  
10 Agreement policy. *Viskase Corp. v. Am. Nat. Can Co.*, 261 F.3d 1316, 1328 (Fed.  
11 Cir. 2001) (It is well established that all entities having substantial rights in the  
12 patent must join or be joined in infringement litigation... The purpose of this rule is  
13 to prevent the possibility of multiple suits against the same defendant."). Therefore,  
14 MaxLinear must be joined as a party in this case, or else complete relief will not be  
15 possible.

16 As to the second prong, joinder of MaxLinear would not destroy subject  
17 matter jurisdiction. This Court has supplemental jurisdiction over Cox's  
18 counterclaims involving MaxLinear pursuant to 28 U.S.C. § 1367 because the  
19 claims are related to the claims over which the Court has original jurisdiction, and  
20 form part of the same case or controversy under Article III of the United States  
21 Constitution. Joinder of MaxLinear is therefore feasible as required by the analysis  
22 of Rule 19. Moreover, even if joinder was not feasible, MaxLinear is indispensable  
23 to this litigation given the rights MaxLinear holds in the Asserted Patents.

24 ***Joinder is Also Appropriate Under Rule 20:*** Independently, MaxLinear's  
25 joinder is appropriate under Rule 20. The Ninth Circuit has held that "[p]ermissive  
26 joinder" under Rule 20 "is to be construed liberally in order to promote trial  
27 convenience and to expedite the final determination of disputes, thereby preventing  
28

multiple lawsuits.” *League to Save Lake Tahoe v. Tahoe Reg’l Planning Agency*, 558 F.2d 914, 917 (9th Cir. 1977). Additionally, “a trial court must also examine the other relevant factors in a case in order to determine whether the permissive joinder of a party will comport with the principles of fundamental fairness.” *Desert Empire Bank v. Ins. Co. of N. Am.*, 623 F.2d 1371, 1375 (9th Cir. 1980). These factors include: (1) the possible prejudice that may result to any of the parties in the litigation; (2) the delay of the moving party in seeking an amendment to his pleadings; (3) the motive that the moving party has in seeking such amendment; (4) the closeness of the relationship between the new and the old parties; (5) the effect of an amendment on the court’s jurisdiction; and (6) the new party’s notice of the pending action. *See LMNO Cable Grp., Inc.*, No. LACV1604543JAKSKX, 2017 WL 8943167, at \*3 (*quoting Desert Empire*, 623 F.2d at 1375).

Cox has previously addressed factors 1 and 2, above. As to factor 3, Cox’s motive in seeking the amendment is in good faith and not for any improper purpose such as delay. Instead, Cox aims to present appropriate claims for relief that are inextricably intertwined with the substance of this case, and whose resolution in one action would be most efficient for all parties. Joinder would ensure that all parties with a potential interest in the Asserted Patents are joined in this action, at a time before the litigation or even discovery are far progressed. Further, the addition of MaxLinear promotes judicial efficiency and a fair resolution of this litigation because of MaxLinear’s substantial involvement with the Asserted Patents.

Factor 4 likewise weighs in favor of joinder. MaxLinear has a close relationship with Entropic, and per Plaintiff’s disclosure to this Court retains a financial stake in this case. *See* Dkt. No. 63. And, as demonstrated in the assignments MaxLinear executed, it is already contractually obligated to assist Entropic in its enforcement of the patents. The close relationship is thus apparent.

1 Under factor 5, the amendment has no impact on this Court's subject matter  
2 jurisdiction over this case. This Court has supplemental jurisdiction over MaxLinear  
3 pursuant to 28 U.S.C. § 1367, because the claims are related to the claims over  
4 which the Court has original jurisdiction, and form part of the same case or  
5 controversy under Article III of the United States Constitution.

6 Finally, under factor 6, MaxLinear had sufficient notice of this case. When  
7 MaxLinear attempted the transfer of the Asserted Patents to Entropic, MaxLinear  
8 knew of its continuing contractual commitments under the DOCSIS License  
9 Agreement it signed. By breaching the requirements of that Agreement Policy,  
10 MaxLinear knew or should have known its attempted transfer to Entropic was not  
11 valid, and thus opened MaxLinear to being a party to any future attempt to assert  
12 those Patents. Further, the purported assignment agreement gave MaxLinear notice  
13 that it may be involved in litigation involving the Asserted Patents, as it includes a  
14 clause that states "Assignor will, at the reasonable request of Assignee, do all things  
15 necessary, proper, or advisable..., to assist Assignee in obtaining, perfecting,  
16 sustaining, and/or enforcing the Patent Rights." Finally, both parties have  
17 identified MaxLinear as a key and material witness to these proceedings.

18 In short, joinder of MaxLinear under either Rule 19 or 20 is appropriate.  
19 Cox's proposed amendment should accordingly be allowed.

## 20 **V. CONCLUSION**

21 For the foregoing reasons, the Cox respectfully requests that this Court grant  
22 Cox's Motion for Leave to File an Amended Answer and Joinder.

1 DATED: August 25, 2023

Respectfully submitted,

2 KILPATRICK TOWNSEND & STOCKTON LLP

3 By: /s/ April E. Isaacson

4 April E. Isaacson  
5 aisaacson@kilpatricktownsend.com  
6 Two Embarcadero Center, Suite 1900  
San Francisco CA 94111  
(415) 273 8306

7 Rishi Gupta  
8 rgupta@kilpatricktownsend.com  
9 Sarah Y. Kamran  
10 skamran@kilpatricktownsend.com  
1801 Century Park East, Suite 2300  
Los Angeles CA 90067  
(310) 777 3733

11 Mitchell G. Stockwell  
12 mstockwell@kilpatricktownsend.com  
13 Vaibhav P. Kadaba  
wkadaba@kilpatricktownsend.com  
14 Michael J. Turton  
mturton@kilpatricktownsend.com  
15 Courtney S. Dabbieri  
cdabbieri@kilpatricktownsend.com  
16 Christopher S. Leah  
cleah@kilpatricktownsend.com  
17 1100 Peachtree Street, NE, Suite 2800  
Atlanta GA 30309  
(404) 815 6500

18 *Attorneys for Defendants*  
19 *Cox Communications, Inc., CoxCom,*  
20 *LLC, and Cox Communications*  
*California, LLC*

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